

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF RED DEER

BETWEEN:

ROBYNN VAN ZANT AND LARRY GREEN

Appellant

- and -

ROBERT BRUCE THOMSON

Respondent

MEMORANDUM OF DECISION
of the
HONOURABLE MR. JUSTICE STERLING SANDERMAN

APPEARANCES:

Larry Green
for Ms. Van Zant and on his own behalf

Glyn L. Walters
for the Mr. Thomson

[1] Ms. Van Zant and Mr. Green were tenants of Mr. Thomson's. The parties entered into a Residential Tenancy Agreement signed on May 31, 2002. Mr. Thomson signed as the landlord. Ms. Van Zant and Mr. Green signed as tenants.

[2] The agreement was provided by Mr. Thomson. It was a pre-printed form with spaces for certain entries to be made. All of the entries in the blank spaces were made by Mr. Thomson. The only writing on the document made by either of the appellants was a signature

when they signed the agreement. In essence, this was Mr. Thomson's agreement. The terms that he offered the appellants were accepted.

[3] The appellants provided a security deposit to Mr. Thomson. They provided this sum on May 11, 2001. The appellants vacated the premises before the end of the month of February of the year 2002. The appellants had difficulty in getting their security deposit back from the respondent. They were forced to launch a claim in the Civil Division of the Provincial Court of Alberta for this money.

[4] In addition to this claim, they made a claim for the return of a sum of money that they paid for the supply of water and heat to the rented premises. They claimed that they paid \$1,133.06 for these utilities when the Residential Tenancy Agreement placed this responsibility with the landlord.

[5] These claims were heard on June 6, 2002. The learned Provincial Court Judge allowed a portion of the claim for the return of the security deposit. The claim for reimbursement in relation to the utility bills was dismissed. The tenants appeal this latter decision.

[6] The learned Provincial Court Judge found that the tenants kept the premises clean. They were good tenants. They returned the residence to the landlord in a clean and tidy condition. Any repairs that had to be made by the landlord were deemed to be those arising from ordinary wear and tear. The deductions from the security deposit by the landlord were found to be unwarranted by the learned Provincial Court Judge.

[7] He found in favour of the tenants, but did not return their entire deposit because they had acted in a most unusual manner towards the landlord. Before they left the premises, they took certain fixtures they should have left behind. They did this in anticipation of a dispute in relation to the security deposit. They returned these items to the landlord for reinstallation. Because of their unwarranted and irresponsible behaviour certain deductions from the award they would have been entitled to were made. The tenants accepted this ruling without dispute.

[8] They do not accept the ruling in relation to their claim for the return of monies they paid for certain utilities. It is from this ruling that they appeal.

[9] This appeal revolves around the interpretation of two separate clauses in the Residential Tenancy Agreement. Clause 3.2 (a) reads:

Additional Rent: In addition to the rent, the tenant shall be responsible for:

- (a) installation, transfers and supply of all utilities and services related to the premises and shall pay due all related charges unless otherwise provided for herein;

[10] Clause 5.1 reads:

Utilities: The tenant shall pay, as and when due, all charges for service and utilities supplied to premises during the term hereof which are the responsibility of the tenant, any amount so paid by the Landlord shall be deemed past due rents and collectable in such manner.

Landlord is Responsible for the following Utilities:	Water/Heat
Tenant is Responsible for the following Utilities:	City/Electricity, Telephone and Cable

[11] For matters of convenience one of the appellants, arranged to have the bills for the utilities sent to their residence. This was an understanding that they had with the providers of the utilities. When the bills were received they were paid. A claim for reimbursement was not made until after the tenants left the premises and had an opportunity to review the Residential Tenancy Agreement.

[12] The learned Provincial Court Judge decided this issue in the following fashion. In his decision at page 61 and 62 he said:

There's a total passing of two ships in the night, as far as what the requirements were. If Exhibit 1 speaks for itself, on page 1, it says, under sections 3 sub 2, additional rent: "In addition to the rent, the tenant shall be responsible for installation, transfer and supply of all utilities and services related to the premises and shall pay all related charges, unless otherwise provided for herein". That's what it says.

But on the next page, 5.1, under "utilities": The tenant covenants with the landlord -- and it says -- "the landlord is responsible for the following utilities: Water and heat".

There's an ambivalence in the document itself, and the court is not going to make an agreement for people, and the people are not going to be allowed to say, well, this meant so-and-so and this doesn't mean so-and-so. The fact is that the tenant paid the utility, was satisfied with that, and the preponderance of evidence is that the tenant registered for and put down a deposit, although that's not in evidence, and paid the utilities.

The claim then for a reimbursement of the utilities under the lease agreement is not made out. Liability for rent includes additional payment of utilities, which is the tenant's responsibility, in one place, and in the other place they are the responsibility of the landlord. So the claim for that portion of the plaintiff's claim for the payment of utilities is dismissed.

[13] I disagree with this conclusion. The Residential Tenancy Agreement was the document of the landlord. The tenants had no role in the preparation of it. They accepted the terms without question. There is no ambivalence in this document. The parties reached an agreement

that was clear. Clause 5.1 clearly supercedes Clause 3.2. The latter clause specifically overrides the former. The responsibility of paying for certain utilities is clearly set out. The landlord has the responsibility for paying for the water and heat used in the rented premises. This claim should not have been dismissed based on the evidence before the trier of fact.

[14] I allow the appeal. The appellants will be awarded judgment in the sum of the amount they paid for water and heat during the time of the agreement. They shall have costs in the sum of \$100 plus any disbursements incurred for the preparation of the transcript of the trial and in bringing this matter properly before the Court.

HEARD on the 4th day of December, 2002.

DATED at Red Deer, Alberta this 9th day of December, 2002.

J.C.Q.B.A.